

**FLATHEAD COUNTY BOARD OF ADJUSTMENT  
MINUTES OF THE MEETING  
SEPTEMBER 1, 2020**

**CALL TO ORDER  
6:02 PM**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:02 p.m. at the Expo Building at the Flathead County Fairgrounds, 265 N Meridian Road, Kalispell, MT 59901. Board members present were Ole Netteberg, Gina Klempel, Tobias Liechti, Cal Dyck and Roger Noble. Mark Mussman and Laura Mooney represented the Flathead County Planning & Zoning Office.

There were 67 members of the public in attendance.

**APPROVAL OF  
MINUTES  
6:03 PM**

Noble motioned, seconded by Netteberg, to approve the August 4, 2020 minutes as written.

The motion passed unanimously on a roll call vote.

**PUBLIC COMMENT  
(Public matters that are  
within the jurisdiction of the  
Board 2-3-103 M.C.A)  
6:03 PM**

None

**JAMES GELORMINO  
(FCU-20-09)  
6:03 PM**

A request by James Gelormino for a conditional use permit for a RV, boat, and mini-storage on property located at 628 Willow Glen Drive, Kalispell, MT, within the Willow Glen Zoning District. The property is zoned R-5 (Two-Family Residential) and contains approximately 2.35 acres.

**STAFF REPORT  
6:04 PM**

Laura Mooney reviewed the Staff Report FCU-20-09 for the board.

**BOARD QUESTIONS  
6:07 PM**

None

**APPLICANT  
PRESENTATION  
6:07 PM**

None

**PUBLIC COMMENT  
6:08 PM**

Timber Stevens, 1563 Haven Dr., spoke in opposition of the application. He did not believe a commercial project fit into a residential area and was concerned for the wildlife.

Leslie Wisher, 1571 Have Dr., spoke in opposition of the application. She was concerned for the safety of the children who played in the area and felt this project did not fit in a residential area.

**BOARD DISCUSSION  
6:12 PM**

Liechti agreed with the staff report and did not see that it would have much of an impact, however, he acknowledged there were a lot of storage units popping up in the valley and wondered what the board thought.

Klempel agreed there were a lot of storage units popping up in the area, some were attractive while others were not. It was up to the board to see if it was a good fit.

Noble questioned staff about the egress and wondered if they could come off Willow Glen instead of Haven Drive. Staff said she did not see a reason why they could not use Willow Glen, permitting it was approved by Road and Bridge for access.

Klempel asked staff what the hours of operation would be. Staff said there were none proposed at this time. The applicant had told her there would be access to the mini storage 24 hours a day but did not give operating business hours.

Dyck asked if it would have a business office on the premises or if it would be off premise. Staff said there was already an office on the premise. She recommended the business hours could be conditioned.

Dyck asked staff if it was going to be fenced around the property. Staff replied that a portion was already fenced and there would be additional fencing or screening after development, which included the frontal portion. Dyck asked if it was going to be conditioned to fence the whole property. Staff replied regulations did not require it since a portion of it was screened.

Dyck felt it needed to be conditioned to have a fence as well as a condition to address hours of operation. He felt business hours should reflect a business day of 8:00 am -5:00 pm. He also felt that the earliest one should access the storage units should be 6:00 am and the latest 10:00 pm.

Netteberg asked staff what the applicants were planning on doing with the rest of the property. Staff described the portion they were proposing to develop.

Liechti agreed with Dyck on the suggested conditions.

Netteberg asked where the storage units would be and staff explained and gave an overview of the site plan.

**APPLICANT  
PRESENTATION  
6:25 PM**

James Gelormino, 95 Park Ave, was the applicant and said he was available for questions.

Gelormino and the board discussed the site plan. They questioned him about access. Gelormino replied the office entrance would be from Haven Drive. Netteberg asked about the access from the office. Gelormino said they would come to the office, which could be accessed from Willow Glen as well, and then they would leave (he had a looped driveway) and drive 100' to the entrance of the shop and the storage units.

Noble asked if there was any way that he could give up the access on Haven Drive and have it on Willow Glen so that there would not be as much impact. Gelormino felt there would be more of an impact on Willow Glen and it would be safer to have it on Haven Drive because of the traffic on Willow Glen. Gelormino said the office hours would be limited and the access to the storage facility would be limited as well.

Dyck asked for clarification on office hours. Gelormino said office hours would be 8:00 am – 5:00 pm, 5 days a week, with an answering service on the weekends. He suggested [access to the storage facility] be 7:00 am – 8:00 pm. Gelormino also noted there was not going to be additional lighting. There was an existing street light which he felt had sufficient illumination. He explained there was going to be a privacy fence on the north boundary with a chain-linked fence around the remaining.

Dyck confirmed that the whole storage unit would be secured by a fence, on all 4 sides. Gelormino confirmed that it would be and he already had a privacy fence to the north.

Klempel asked if he was going to use neutral colors. He replied that he was going to continue with his color scheme that was neutral in color. He also mentioned he would keep the dust down during construction.

Klempel wondered if he had a landscaping plan. Gelormino said they had started making the property look better when they bought it and planned to continue to make huge improvements.

Noble asked about the privacy fence on the north side and asked what the vacant lot to the north was. Gelormino said it was a proposed trailer court, which he didn't want to look at it. Because this property was in the middle of a high density neighborhood, Noble asked about putting up a privacy fence on the west and south side. There was another trailer court to the west side of the property and Gelormino said he would be ok with putting a privacy fence there, however, he felt that he would have a very presentable project [with the color choices he had made]. He did not feel that putting one on the south side would benefit anything.

Dyck asked for clarification if he was willing to put a privacy fence on the north and west sides. Gelormino agreed to it if that was what would be conditioned. He was already doing the privacy fence on the north.

Dyck inquired about the doorways facing the main driveways. Gelormino described his building development plan and doorways in detail. He was also planning on doing a landscape buffer between Haven Drive [and his property]. Right now it was just a "mowable" ditch.

Dyck had a question for the staff, on FOF #12, which was a typo regarding the access.

**BOARD DISCUSSION**  
**6:38 PM**

Dyck suggested adding condition #11 to state that office hours be 8:00 am – 5:00 pm, Monday through Friday. Rental availability would be from 7:00 am to 8:00 pm.

Noble said that the site plan also showed landscape around N. Haven, he felt there should be some sort of plan as to what that would be and it should be submitted to Planning and Zoning. They discussed making this condition #12. Liechti asked what standard the Planning Department could uphold for said landscaping.

Mussman read section 4.13.030, it did require landscaping and what type of landscaping it needed to be. It was the performance standard and a requirement for any type of approved mini storage.

Dyck suggested the complete storage facility be fenced, with the north side and the west side being a privacy fence.

**MAIN MOTION ON TO**  
**ADOPT F.O.F.**  
**(FCU-20-09)**  
**6:42 PM**

Liechti made a motion, seconded by Netteberg, to accept Staff Report FCU-20-09 as Findings-of-Fact.

**ROLL CALL VOTE TO**  
**ADOPT F.O.F.**  
**(FCU-20-09)**  
**6:42 PM**

Motion passed unanimously on a roll call vote.

**MOTION TO AMEND**  
**CONDITIONS**  
**(FCU-20-09)**  
**6:44 PM**

Dyck made a motion, seconded by Klempel, to add the following conditions of FCU-20-09 as stated:

*11. The hours of operation for the leasing office will be 8:00am to 5:00pm, Monday through Friday. Access to the storage facilities will be 7:00am to 8:00pm, seven days a week.*

*12. A privacy fence or sight obscuring buffer will be placed along both the north and west side of the property.*

**ROLL CALL TO AMEND**  
**CONDITIONS**  
**(FCU-20-09)**  
**6:44 PM**

Motion passed unanimously on a roll call vote

**MOTION TO APPROVE  
(FCU-20-09)  
6:44 PM**

Dyck made a motion, seconded by Liechti, to approve the FCU-20-09 application with amended conditions.

**ROLL CALL TO  
APPROVE  
(FCU-20-09)  
6:45 PM**

Motion passed unanimously on a roll call vote.

**SECTION 16 FAMILY  
LIMITED PARTNERSHIP  
(FCU-20-04)  
6:45 PM**

A request by Rob Koelzer, Schellinger Construction Company, for Section 16 Family Limited Partnership to modify a condition of approval of FCU-05-07. The condition requested to be modified is to allow the operation of a concrete and/or asphalt batch plant on an existing gravel extraction operation located at 3427 Farm to Market Road. The property contains approximately 160 acres.

**BOARD CONFLICT OF  
INTEREST DISCLOSURE  
6:46 PM**

Noble recused himself from the board for the hearing of this file. He had been involved with the original application FCU-05-07.

**STAFF REPORT  
6:46 PM**

Mark Mussman reviewed the Staff Report FCU-20-04 for the board.

**BOARD QUESTIONS  
6:47 PM**

None

**APPLICANT  
PRESENTATION  
6:48 PM**

Rob Koelzer, with Schellinger Construction Company provided a presentation for the board. He submitted a handout of his presentation so that the board could follow along. He gave an introduction giving their intent and the reasons why they felt it should be approved. He intended to clear up some of the finding of facts from WVLUAC that were of concern to him. He addressed the absence of Environmental Constraints.

Roger Noble, currently with Water and Environmental Technologies, was there because his former company, Applied Water Consulting, had done thorough and comprehensive groundwater assessment in the vicinity of the Schellinger Gravel Pit (FCU-05-07 application) and was asked to come and explain those results this evening. The objective of the evaluation was to evaluate the potential impacts to ground water quality from gravel mining operations. He discussed

this in great detail. He addressed the concern and mitigation for potential groundwater impacts; secondary containment, SPCC Plan for gravel pit, asphalt oil is highly viscous, and they determined there were no human receptors downgradient. He said it was a low risk situation and the risk for groundwater contamination was low.

Koelzer addressed finding #7 which addressed fencing, screening and landscaping. He addressed the concern by doing a google earth tour, showing an overview of the site. He showed the berm that met DEQ approval. He showed entrances to subdivisions which had been put in after the gravel pit. He showed the pit entrance and discussed the approved approach and what they do for dust abatement. He continued to do a site visit around the neighborhood and said he wanted to show the perspective of the operation and the surrounding property. He continued to discuss screening and what people would be able to see and continued to discuss this in great detail. He discussed the storage of asphalt and the operation. He explained that it would not be a batch plant (an industrial site) and instead would be a drum mix plant. It was permitted differently. It would not be permanent and were portable.

He addressed finding of fact #9 regarding sewer, water, and storm water facilities. He said they were in compliance with DEQ. They practiced MDT's best management practices. They had a spill control plan. They had an emergency action plan. They have no violations with DEQ and were also subject to inspection by DEQ at any time. He said they were checked frequently by DEQ.

He addressed finding of fact #10 regarding Fire & Police protection. He said the sheriff's department came out when needed. He discussed the West Valley Volunteer Fire Rescue Agency letter in response to the plant. He said asphalt was non-flammable. They had emergency spill kits on site for immediate response.

He addressed finding of fact #12 regarding excessive traffic generation. They had an updated traffic impact study completed.

Bob Abeline with Abeline Traffic Services did the original traffic impact study for the project in 2008 for the gravel pit – which analyzed all the impacts based on the uses that they were planning at that time. They were doing very similar uses, with the exception of the asphalt operations. He was asked to update the Traffic Impact study. He discussed his findings in great detail and it showed that not a lot had changed in the last 12 years, based on the data from MDOT.

They analyzed the traffic volume throughout the state, every year. The traffic data on W. Reserve and Farm to Market Road had increased about 6%. He discussed the data which had been collected and felt it was normal traffic for those designed roads. He continue to discuss the possible traffic increase in great detail and shared data to compare across the state. He said occasional special projects may increase [the traffic] but that was rare and they did not normally do traffic mitigation for such impact. The proposed batch plant may add 1 additional truck per hour.

Koelzer addressed finding of fact #13 which addressed noise or vibration. He showed various decibel readings, at various ranges, at some of his other concrete plants. He said the asphalt would not create more noise than what was being created at the gravel pit. He said they were not going to be running 24/7 and would be project oriented.

He addressed finding of fact #14 regarding smoke, fumes, gas, or odors. He said emissions were closely monitored by the EPA and Montana DEQ. Asphalt and concrete batch plants were registered with DEQ to ensure compliance. Asphalt plants were equipped with baghouse filters to minimize dust and fumes. He claimed asphalt plants were cleaner than the crusher [in gravel pits]. They burned cleaner and the white smoke seen was steam. There was not a whole lot they could do about the fumes and there was a chance the surrounding properties could smell those but said it was mitigated by hours of operation, location of plant, and the prevailing winds in the area. He said the fumes would predominately be pushed towards the Tutvedts property by the prevailing winds.

He addressed the concern over property values decreasing. The nearby subdivision had been developed after the gravel pit. He provided the board with a letter from a realtor that stated the value of property and homes in the area were on the rise.

He said they had zero formal complaints received by Flathead County Planning and Zoning, zero formal complaints received by DEQ, and zero violations received by regulators at this site.

The addition of the asphalt plant was allowed by the zoning regulations. They were committed to being a good neighbor and operating the site responsibly. They had a duty do to that and use this resource responsibly.

Brad Newcomb, with Calumet Montana Refining in Great Falls, had worked with a company which supplied asphalt for paving purposes, since the late

1920s. He said asphalt was a really long carbon chain of petroleum (different from shorter chains being in gasoline, diesel, etc.). He discussed the safety risks. He discussed clean up after any potential spills, which would become a solid. It would not penetrate the ground, like a fuel spill might. He was available for questions.

## **BOARD BREAK**

**7:47 PM**

## **PUBLIC COMMENT**

**8:00 PM**

Tim Secord, 1040 8<sup>th</sup> St. W, spoke in favor of the application. He discussed safety mitigation and brought up that the construction season was short.

Charlene Iannucci, 597 Clark Homestead Ln., spoke in opposition of the application. She believed this should be considered heavy industrial and not be permitted in this area and in West Valley Zoning.

Tom Clark, 590 Clark Homestead Ln, spoke in opposition of the application. He discussed the WV Neighborhood plan and how they did not want industrial uses in West Valley.

Roger Brewer, 325 Farm to Market Road, spoke in opposition of the application. He felt Planning and Zoning did not have the time nor the expertise to implement the West Valley neighborhood plan and asked that the BOA help defend their community.

Molly Schwarz, 3248 Farm to Market, spoke in opposition of the application. She discussed the history of the developments in the area and the fact that it was an increasingly residential area where a heavy industrial use did not fit.

Clara LaChappelle, 3580 Farm to Market Rd., spoke in opposition of the application. She was concerned about the increase of traffic, the dust control, and the contamination of Lost Creek. She felt the water study was inadequate.

Greg Wilson, 288 Shepherd Trail, spoke in opposition of the application. He felt most people agreed that West Valley was residential in nature and was an inappropriate area for heavy industry.

Mary Kay Wilson, 288 Sheppard Trail, spoke in opposition of the application. She never thought they would live next to a heavy industrial use or that a residential neighborhood and heavy industrial area would be right next to each other.

Meliss Clark, 1190 Clark Dr., spoke in opposition of the application. She was concerned that the water study done in 2008 was on a gravel pit and not a batch plant. She was concerned about the contamination of the Lost Creek Aquifer and the effects it would have on the farm land. She was also concerned about the health ramifications there would be because of the asphalt.

Mike Beale, 2450 Farm to Market Rd., spoke in opposition of the application. He felt the gravel pit was not in compliance and discussed this in detail saying that the Planning and Zoning office had not done their job.

Mark Schwager, 670 Dusty Acres Lane, spoke in opposition of the application. He was concerned about the heavy use of equipment and the traffic, which was already an issue.

Jim Webber, 227 Rhodes Draw, spoke in opposition of the application. He asked they consider property values, human health, and the reason why people live in the valley.

Susann Webber, 227 Rhodes Draw, spoke in opposition of the application. She was concerned about the health ramifications of having the toxins in the area and the exposure to FPFAS. *(Please see exhibit that she turned in)*

John Schwarz, 3248 Farm to Market Rd., spoke in opposition of the application. As a professional engineer, he respectfully disagreed with the traffic study and water study and referred to the Lost Hills Subdivision Environmental Report *(which he submitted to the board and has been attached).*

Charles Clark, 1190 Clark Dr., spoke in opposition of the application. He had a lot of history in the area and was frustrated with the applicant.

Terry Longenecker, 3230 Farm to Market Rd., spoke in opposition of the application. He discussed the fruit of the West Valley Neighborhood Plan and was frustrated that the plant was in the heart of West Valley and the visual impact it had.

Nugget Carmalt, 1925 Church Dr., spoke in opposition of the application. She was concerned about the negative impact the truck traffic already had and showed a video showing the truck traffic.

Steven Alexandro, 2001 McMannamy Draw, spoke in opposition of the application. He addressed the issue of air quality and discussed, in great detail and with data, the plumes of toxins that would be carried through the wind. He had yet to find an asphalt plant so close to a residential area.

Linda Davis Newgard, 905 Clark Dr., spoke in opposition of the application. She expressed her frustration that, those who had bought into the area since 2008, were under the impression that an asphalt plant could not go in. She felt it would undermine the court's decision and did not belong in a residential area.

Jenna Newgard, 905 Clark Dr., spoke in opposition of the application. She reminisced over her love for growing up in West Valley.

Franklin Schroeter, 1275 Lost Creek Dr., neither clarified if he was in favor or opposition of the application. He pointed out that there has been a shortage of asphalt in the area but he also sympathized with the people who had bought homes out there.

Donald Murray, esp., 146 Somerset Dr, represented the West Valley Neighbors. He spoke in opposition of the application. He addressed his memo that he submitted earlier in the day *(see attached)* and specifically four points. He addressed the board's authority to deny the request. He also mentioned the definition which the commissioners had changed did not change it in the West Valley zone. He read the purpose of West Valley zone. He asked them to take a step back and decide where these types of plants belonged in the valley.

Mayre Flowers, representing Citizens for a Better Flathead, spoke in opposition of the application. She referenced her public comment that she had turned in *(and has been attached)*.

David Lessor, 1978 Church Drive., spoke in opposition of the application. He drove a school bus and was concerned over the traffic impact and the safety for the kids.

Virginia Coyle, 120 Marvins Way, spoke in opposition of the application. She was concerned that there were inaccuracies in the water evaluation report and was concerned about the Lost Creek aquafer and the air pollution that would be affected for decades to come.

**APPLICANT REBUTTAL**  
**10:17 PM**

Al Schellinger said they had heard a lot of testimony. He said traffic wasn't going to change because of the asphalt plant. He said they wouldn't be here tonight if the text and zoning regulations didn't allow [this as a conditional use]. He suggested they could approve part of it or condition it. They would pull out the concrete plan and only have the asphalt plan for 90 days a year if they wanted to condition it so. They did not plant on putting a permanent plant out there. It was not their goal nor what they wanted to do. He discussed being willing to compromise.

**STAFF REBUTTAL**  
**10:21 PM**

None

**BOARD DISCUSSION**  
**10:22 PM**

Liechti said he was struggling with it and had some conditions he might be willing to add should they move forward.

Klempel was no stranger to the gravel industry. Gravel was like the red headed step child that nobody wanted but everybody needed. She was concerned over it being in a more residential area.

Dyck agreed with Klempel. Gravel was an important product that was needed in the valley. He was concerned they would not be able to even address this with what had happened with the Supreme Court. He also struggled, when going through the findings of facts, that they had to be careful in how they mitigated the smell in an extremely residential area. The area was going to change even more in the years to come. The importance of having a gravel pit was one thing but having the process of the asphalt [was another]. He discussed extracting gravel out of the ground vs. an extractive industry which was importing a product (i.e. asphalt or concrete). They were trying to make a one

size fits all which did not always work.

Netteberg said it had been a difficult decision for them. He discussed the continual growth of the valley. We were going to need a lot more infrastructure and batch plants just to handle the load of the work coming up. The question was where. The sticky point with him was the original application said they would not put in a batch plant. He did not know how it changed or why it changed but discussed his dislike for things being “after-the-fact”. He had a hard time that they said they would not have one and now they wanted one.

Klempel agreed with Netteberg that an agreement was an agreement. Schellingens could not do anything more with the land than the landowner was willing to do. She understood they were in a tough spot. She did not know why they were reviewing it here tonight because the court said it needed to go back to them. She understood a plant was needed in the valley because it was growing, they could not be stopped, but they were trying to fit it into a one size fits all.

Dyck believed they needed to go back into the history of the file to look at the agreement between the landowner and the court. He did not feel comfortable changing that in any form.

Dyck asked Mussman for procedural clarification on if they need to adopt finding of facts. They discussed their options on how to move forward depending on how they wanted to vote for the application

Netteberg interjected to point out to the audience that they had to look at everything. They had to look at the future. He was sitting there thinking that the applicant did not have to make asphalt at that plant but it was going to cost him more money to travel wherever he needed to go. Those were the trade-offs. They were not chastising Schellinger’s Construction. It was a tough decision.

Dyck asked Mussman for clarification on approving the finding of facts. He was struggling with whether or not they should even be looking at it because of where it sat with the court. Board and staff discussed protocol in detail.

**MAIN MOTION ON TO  
ADOPT F.O.F.  
(FCU-20-04)  
10:41 PM**

Dyck made a motion, seconded by Leitchti, to accept Staff Report FCU-20-04 as Findings-of-Fact.

**ROLL CALL TO ADOPT  
F.O.F.  
(FCU-20-04)  
10:41 PM**

Motion failed on a 3-1 roll call vote. Liechti dissented

**MOTION TO MODIFY  
F.O.F. TO INCLUDE THE  
RECOMMENDED  
FINDINGS MADE BY  
THE WEST VALLEY  
LAND USE ADVISORY  
COMMITTEE  
10:44 PM**

Dyck made a motion, seconded by Netteberg, to amend Findings of Fact FCU-20-04 to include adopting the findings recommended by the West Valley Land Use Advisory Committee which included finding 3,7,9,10,12,13,14, and adding a finding. *(please see attached summary of findings)*

**ROLL CALL TO  
MODIFY F.O.F. TO  
INCLUDE THE  
RECOMMENDED  
FINDINGS MADE BY  
THE WEST VALLEY  
LAND USE ADVISORY  
COMMITTEE  
10:44 PM**

Motion passed on a 3-1 roll call vote. Liechti dissented.

**MOTION TO DENY  
(FCU-20-04)  
10:44 PM**

Dyck made a motion, seconded by Klempel, to deny the FCU-20-04 application with conditions.

**ROLL CALL TO DENY  
(FCU-20-04)  
10:45 PM**

Motion passed unanimously on a roll call vote.

**NEW BUSINESS  
10:46 PM**

None

**OLD BUSINESS**  
**10:46 PM**

Mussman had reviewed last month's meeting and heard their request for a workshop. He said he would have stuff prepared.

**ADJOURNMENT**  
**10:47 PM**

The meeting was adjourned at approximately 10:47 pm on a motion by Dyck. The next meeting will be held at 6:00 pm on October 6, 2020.

  
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Cal Dyck, Chairman

  
\_\_\_\_\_  
Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 10/6 2020